

**United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

GIBSON, INC.,

8

Plaintiff,

300

V.

§ Civil Action No. 4:19-CV-358

Judge Mazzant

ARMADILLO DISTRIBUTION
ENTERPRISES, INC., and CONCORDIA
INVESTMENT PARTNERS, LLC,

38

Defendants.

600

VERDICT FORM

SECTION 1

Infringement – Armadillo

Question No. 1

Do you find, by a preponderance of the evidence, that Armadillo infringed an alleged Gibson trademark and engaged in unfair competition in a manner that creates a likelihood of confusion as to the source, affiliation, or sponsorship of Gibson's products?

Answer “Yes” or “No” for each trademark listed below:

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: No

The Dove Wing Headstock: ND

The HUMMINGBIRD: Yes

The FLYING V: YES

If you answered “Yes” for any trademark, please proceed to Question No. 2. If you answered “No” for each trademark, please proceed to Section 8.

Question No. 2

Do you find, by a preponderance of the evidence, that Armadillo sold or marketed a counterfeit of any alleged Gibson trademark?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 1.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The SG Body Shape: Yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: Yes

The FLYING V: Yes

If you answered “Yes” to Question No. 2, please proceed to Question No. 3. Otherwise, please proceed to Section 2.

Question No. 3

Do you find, by a preponderance of the evidence, that Armadillo intentionally infringed an alleged Gibson trademark?

Answer “Yes” or “No” for each trademark listed below. You should provide an answer for those trademarks which you answered “Yes” in Question No. 2.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: _____

The SG Body Shape: Yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: Yes

The FLYING V: Yes

If you answered “Yes” to Question No. 2, please proceed to Question No. 4. Otherwise, please proceed to Section 2.

Question No. 4

Do you find, by a preponderance of the evidence, that Armadillo willfully infringed an alleged Gibson trademark?

Answer “Yes” or “No” for each trademark listed below. You should provide an answer for those trademarks which you answered “Yes” in Question No. 2.

The Flying V Body Shape: No

The Explorer Body Shape: No

The ES Body Shape: _____

The SG Body Shape: No

The Dove Wing Headstock: _____

The HUMMINGBIRD: No

The FLYING V: No

Please proceed to Section 2.

SECTION 2 Laches – Armadillo

If you answered “Yes” for any of the trademarks in Question No. 1, please answer Question No. 5. Otherwise, please proceed to Section 8.

Question No. 5

Do you find, by a preponderance of the evidence, that Gibson delayed in asserting its trademark right(s) against Armadillo?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 1.

The Flying V Body Shape: yes

The Explorer Body Shape: yes

The ES Body Shape: _____

The SG Body Shape: yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: yes

The FLYING V: yes

If you answered “Yes” for any trademark in Question No. 5, answer Question No. 6. Otherwise, please proceed to Section 3.

Question No. 6

Do you find, by a preponderance of the evidence, that there was a lack of excuse for Gibson’s delay in asserting its trademark right(s) against Armadillo?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 5.

The Flying V Body Shape: yes

The Explorer Body Shape: yes

The ES Body Shape: _____

The SG Body Shape: Yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: Yes

The FLYING V: Yes

If you answered "Yes" for any trademark in Question No. 6, please proceed to Question No. 7. Otherwise, please proceed to Section 3.

Question No. 7

Do you find, by a preponderance of the evidence, that the delay caused undue prejudice to Armadillo?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 6.

The Flying V Body Shape: Yes

The Explorer Body Shape: Yes

The ES Body Shape: _____

The SG Body Shape: Yes

The Dove Wing Headstock: _____

The HUMMINGBIRD: Yes

The FLYING V: Yes

If you answered "Yes" for any trademark in Question No. 7, please proceed to Question No. 8. Otherwise, please proceed to Section 3.

Question No. 8

What is the earliest approximate date (year is fine) that Gibson should have known that Armadillo was using its trademarks?

You should only provide an answer for those trademarks which you answered “Yes” in Question No. 5, Question No. 6, and Question No. 7.

The Flying V Body Shape: 1977

The Explorer Body Shape: 1976

The ES Body Shape: _____

The SG Body Shape: 2012

The Dove Wing Headstock: _____

The HUMMINGBIRD: 2002

The FLYING V: 2019

Please proceed to Question No. 9.

Question No. 9

Has Gibson proven, by a preponderance of the evidence, that Armadillo at any point had “unclean hands” in connection with their use of an alleged Gibson trademark?

Answer “Yes” or “No.”

Answer: YES

Please proceed to Section 3.

SECTION 3 Contributory Infringement – Concordia

If you answered “Yes” for any of the trademarks in Question No. 1, answer Question No. 10. Otherwise, please proceed to Section 8.

Question No. 10

Do you find, by a preponderance of the evidence, that Concordia contributed

to Armadillo's conduct in infringing and/or counterfeiting of the alleged Gibson's trademarks?

Answer "Yes" or "No."

Answer: No

If you answered "Yes" to Question No. 10, please proceed to Section 4.

If you answered "No" to Question No. 10, but answered "Yes" for any of the trademarks in Question No. 1, please proceed to Section 5.

If you answered "No" to Question No. 10, and if you answered "No" for all of the trademarks in Question No. 1, please proceed to Section 8.

SECTION 4 Laches – Concordia

If you answered "Yes" for any of the trademarks in Question No. 1, and if you answered "Yes" to Question No. 10, please answer Question No. 11. Otherwise, please proceed to Section 5.

Question No. 11

Do you find, by a preponderance of the evidence, that Gibson delayed in asserting its trademark right(s) against Concordia?

Answer "Yes" or "No" for each trademark listed below. You should only provide an answer for those trademarks which you answered "Yes" in Question No. 1.

The Flying V Body Shape: _____

The Explorer Body Shape: _____

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: _____

The HUMMINGBIRD: _____

The FLYING V: _____

If you answered “Yes” for any trademark in Question No. 11, answer the question below. Otherwise, please proceed to Section 5.

Question No. 12

Do you find, by a preponderance of the evidence, that there was a lack of excuse for Gibson’s delay in asserting its trademark right(s) against Concordia?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 11.

The Flying V Body Shape: _____

The Explorer Body Shape: _____

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: _____

The HUMMINGBIRD: _____

The FLYING V: _____

If you answered “Yes” for any trademark in Question No. 12, please proceed to Question No. 13. If you answered “No” for each trademark, please proceed to Section 5.

Question No. 13

Do you find, by a preponderance of the evidence, that the delay caused undue prejudice to Concordia?

Answer “Yes” or “No” for each trademark listed below. You should only provide an answer for those trademarks which you answered “Yes” in Question No. 12.

The Flying V Body Shape: _____

The Explorer Body Shape: _____

The ES Body Shape: _____

The SG Body Shape: _____

The Dove Wing Headstock: _____

The HUMMINGBIRD: _____

The FLYING V: _____

If you answered “Yes” for any trademark in Question No. 13, please proceed to Question No. 14. Otherwise, proceed to Section 5.

Question No. 14

Has Gibson proven, by a preponderance of the evidence, that Concordia at any point had “unclean hands” in connection with their use of an alleged Gibson trademark?

Answer “Yes” or “No.”

Answer: _____

Please proceed to Section 5.

SECTION 5 Armadillo’s Profits

If you have found liability for the infringement of any of the Gibson Trademarks, you are instructed that the parties have agreed that the amount of profits Armadillo earned from sales of products accused of infringing each specific mark from October 1, 2017, to the present is the amount indicated below.

The Flying V Body Shape:	\$66,621.49
The Explorer Body Shape:	\$76,391.69
The ES Body Shape:	\$3,123.03
The SG Body Shape:	\$19,905.47
The Dove Wing Headstock:	\$1,395,437.33
The Hummingbird Wordmark:	\$4,551.80
The Flying V Wordmark:	\$928.77

You are further instructed that you may award damages for the portion of Armadillo's profits you attribute to the trademark, as contrasted with other attributes and features of the guitars, but only for a shape corresponding to a trademark for which you answered "Yes" in Question No. 1.

Question No. 15

What sum of Armadillo's profits, if paid now in cash, would fairly and reasonably compensate Gibson, if any?

Answer in dollars and cents, if any.

Answer: \$ 1 0 0

Please proceed to Section 6.

SECTION 6 Statutory Damages

If you answered "Yes" for any trademark in Question No. 2, and if you answered "Yes" for any trademark in Question No. 5 and Question No. 6, and if you answered "No" for Question No. 9, answer the question below. Otherwise, please proceed to Section 8.

Question No. 16

What sum of money, if paid now in cash, do you find Gibson has proven by a preponderance of the evidence in counterfeiting statutory damages, if any, per counterfeit trademark per type of goods sold, offered for sale, or distributed?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to Section 7.

SECTION 7 Exemplary Damages

If you answered “Yes” to Question No. 16, answer Question No. 17. Otherwise, please proceed to Section 8.

Question No. 17

Do you find, by clear and convincing evidence, that the harm to Gibson resulted from malice?

Answer “Yes” or “No” for each Defendant listed below. But only answer for Concordia if you answered “Yes,” to Question No. 10, and if you answered “Yes” for any trademarks in Question No. 11 and Question No. 12, and if you answered “No,” for Question No. 14.

Armadillo: _____

Concordia: _____

If you answered “Yes” for either Defendant in Question No. 17, please proceed to Question No. 18. Otherwise, please proceed to Section 8.

Question No. 18

What sum of money, if paid now in cash, should be assessed against Armadillo and awarded to Gibson as exemplary damages, if any, for the conduct found in response to Question No. 17?

Answer in dollars and cents, if any.

Answer: _____

If you answered “Yes” for either Defendant in Question No. 17, please proceed to Question No. 19. Otherwise, please proceed to Section 8.

Question No. 19

What sum of money, if paid now in cash, should be assessed against

Concordia and awarded to Gibson as exemplary damages, if any, for the conduct found in response to Question No. 17?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to Section 8.

SECTION 8 Cancellation

If you answered “No” for any alleged Gibson trademark listed in Question No. 1, please proceed to Question No. 20. Otherwise, please proceed to Section 9.

Question No. 20

Do you find, by a preponderance of the evidence, that any of the Gibson trademark registrations should be cancelled because they are generic?

Answer “Yes” or “No” for each trademark listed below:

The Flying V Body Shape: No

The Explorer Body Shape: No

The ES Body Shape: Yes

The SG Body Shape: No

If you answered “Yes” for a trademark in Question No. 20, please proceed to Question No. 21. Only answer Question No. 21 for those trademarks which you answered “Yes” to Question No. 20. Otherwise, if you answered “No” for all the trademarks in Question No. 20, please proceed to Section 9.

Question No. 21

What year did the shape become generic?

The Flying V Body Shape: _____

The Explorer Body Shape: _____

The ES Body Shape: 1996

The SG Body Shape: _____

Please proceed to Section 9.

SECTION 9 Tortious Interference

Question No. 22

Do you find, by a preponderance of the evidence, that Gibson tortiously interfered with Armadillo's prospective business relation(s)?

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" to Question No. 22, answer Question No. 23.

If you answered "No" to Question No. 22, do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

Question No. 23

Do you find, by a preponderance of the evidence, that Gibson justifiably interfered with Armadillo's prospective business relation(s)?

Answer "Yes" or "No."

Answer: Yes

If you answered "No," to Question No. 23, please proceed to Question No. 24. If you answered "Yes," do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

Question No. 24

What sum of money, if any, if paid now in cash, has Armadillo proven, by a preponderance of the evidence, would fairly and reasonably compensate Armadillo for its actual damages, if any, that proximately resulted from Gibson's conduct?

Answer in dollars and cents, if any.

Answer: _____

If you answered "Yes" to Question No. 24, please proceed to Question No. 25. Otherwise, do not answer any other questions. Please Proceed to the last page to sign and date the Jury Verdict.

Question No. 25

Do you find, by clear and convincing evidence, that the harm to Armadillo resulted from malice?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question No. 25, please proceed to Question No. 26. Otherwise, do not answer any other questions. Please proceed to the last page to sign and date the Jury Verdict.

Question No. 26

What sum of money, if any, if paid now in cash, should be assessed against Gibson and awarded to Armadillo as exemplary damages, if any, for the conduct found in response to Question No. 25?

Answer in dollars and cents, if any.

Answer: _____

Please proceed to the last page to sign and date the Jury Verdict.

Foreperson's]

ate:

3/21/25